

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

MICHAEL DONALDSON,

Plaintiff,

V.

TRAE FUELS, LLC., et al.

Defendants.

Case No.: 3:18CV00097

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

EXHIBIT 17

Transcript of Michael Donaldson
Conducted on October 3, 2019

1 (1 to 4)

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF VIRGINIA</p> <p>3 CHARLOTTESVILLE DIVISION</p> <p>4 - - - - - x</p> <p>5 MICHAEL DONALDSON, :</p> <p>6 Plaintiff, :</p> <p>7 v. : Civil Action No.</p> <p>8 TRAE FUELS, LLC., et : 3:18CV00097</p> <p>9 al., :</p> <p>10 Defendants. :</p> <p>11 - - - - - x</p> <p>12</p> <p>13 Deposition of MICHAEL DONALDSON</p> <p>14 WASHINGTON, DISTRICT OF COLUMBIA</p> <p>15 Thursday, October 3, 2019</p> <p>16 10:30 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Job No.: 263611</p> <p>21 Pages: 1 - 180</p> <p>22 Reported By: Kaylee Lachmann, RPR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF, DONALDSON:</p> <p>3 JACK JARRETT, ESQUIRE</p> <p>4 ALAN LESCHT & ASSOCIATE, PC</p> <p>5 1825 K Street NW</p> <p>6 Suite 750</p> <p>7 Washington, DC 20006</p> <p>8 (202) 463-6036</p> <p>9</p> <p>10 ON BEHALF OF THE DEFENDANTS, TRAE FUELS, LLC,</p> <p>11 et al.:</p> <p>12 LARS H. LIEBELER, ESQUIRE</p> <p>13 JACKSON S. NICHOLS, ESQUIRE</p> <p>14 COHEN SEGLIAS PALLAS GREENHALL & FURMAN PC</p> <p>15 1828 L Street, NW</p> <p>16 Suite 705</p> <p>17 Washington, DC 20036</p> <p>18 (202) 466-4110</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
2	4
<p>1 Deposition of MICHAEL DONALDSON, held at the</p> <p>2 offices of:</p> <p>3</p> <p>4</p> <p>5 Cohen Seglias Pallas Greenhall & Furman PC</p> <p>6 1828 L Street, NW</p> <p>7 Suite 705</p> <p>8 Washington, DC 20036</p> <p>9 (202) 466-4110</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Pursuant to notice, before Kaylee Lachmann,</p> <p>15 Registered Professional Reporter and Notary Public</p> <p>16 in and for the District of Columbia.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF MICHAEL DONALDSON PAGE</p> <p>3 By Mr. Liebeler 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (Attached)</p> <p>9 DONALDSON DEPOSITION EXHIBIT PAGE</p> <p>10 Exhibit 1 Confidentiality Agreement 38</p> <p>11 Exhibit 2 Employee Counseling Notice 82</p> <p>12 Exhibit 3 Supplemental Interrogatories 113</p> <p>13 Exhibit 4 6/23/14 E-mail Correspondence 127</p> <p>14 Exhibit 5 1/31/14 E-mail Correspondence 134</p> <p>15 Exhibit 6 1/31/14 E-mail Correspondence 143</p> <p>16 Exhibit 7 1/31/14 E-mail Correspondence 147</p> <p>17 Exhibit 8 2/24/14 E-mail Correspondence 150</p> <p>18 Exhibit 9 2/24/14 E-mail Correspondence 153</p> <p>19 Exhibit 10 4/14/14 E-mail Correspondence 154</p> <p>20 Exhibit 11 8/7/14 E-mail Correspondence 165</p> <p>21 Exhibit 12 6/26/14 E-mail Correspondence 169</p> <p>22</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

21 (81 to 84)

<p>81</p> <p>1 criticism for that? I'm not asking you whether 2 the criticism was right or wrong. 3 A Right. 4 Q I understand that you don't agree with it? 5 A Yes. 6 Q The question is whether they criticized 7 your performance for putting reports in his chair. 8 Is the answer yes? 9 A That -- 10 MR. JARRETT: Objection to the form of the 11 question. You can answer. 12 A There was -- that was just that there was 13 a reason behind it. 14 Q Okay. All right. You also included 15 control John's spending. Is that a complaint that 16 they made of you, that it was your responsibility 17 to control John's spending and you weren't doing 18 it adequately? Whether you agree with it or not 19 -- and I assume you disagree with it -- did they 20 criticize you for that? 21 A Yeah, for their -- for whatever reason 22 they had, yeah. Yeah.</p>	<p>83</p> <p>1 A It looks like Beth Aleman. Yes, sir. 2 Q But your testimony is that you did not see 3 this during the time that you were employed with 4 Trae Fuels? 5 A I never saw this until, you know, you had 6 it as an exhibit in your EEOC rebuttal. 7 Q Okay. All right. Does reading this 8 document help to refresh your recollection about 9 more details of the meeting, which was either on 10 June 3rd on June 4th? Do you remember which the 11 date was? Because this document is dated 12 June 4th, but in your complaint you said that the 13 meeting was on June 3rd. 14 A Well, I don't -- I thought it was 15 June 3rd. I could be wrong, I mean, the day -- I 16 thought it was on June 3rd. Maybe this was 17 written up the next day. 18 Q Right. To your understanding, does this 19 summary of the meeting here correspond with the 20 paragraph 72 in the meeting that you've described 21 in paragraph 72 and 73 of your complaint? 22 MR. JARRETT: Objection. Vague as to the</p>
<p>82</p> <p>1 (Whereupon, Exhibit 2, Employee Counseling 2 Notice, was marked for identification.) 3 Q I'm going to hand you what's been marked 4 as Exhibit 2. Please take a look at that and read 5 it and let me know when you're done reading it. 6 A Okay. 7 Q While you're reading that, I'm going to 8 have Cynthia make a copy of these interrogatories 9 that we've signed right here. 10 A I read it. 11 Q You can keep it. Have you had an 12 opportunity to read it? 13 A Yes, sir. 14 Q And have you seen this document before? 15 A I never saw it until we had the EEOC 16 investigation, and it was after you did your 17 response, which was probably -- we got it two 18 years later or something like that. I had not 19 seen this document today because it was not 20 presented to me to sign. 21 Q I see. Do you recognize whose signature 22 is in the bottom left?</p>	<p>84</p> <p>1 meaning of correspond. You can answer. 2 THE WITNESS: Did you want me to answer? 3 MR. JARRETT: Yeah. You can answer. 4 THE WITNESS: Okay. Sorry. 5 Q There's not two meetings; it's just one 6 meeting, correct? 7 A What, this right here? 72 and 73? 8 Q Right. 9 A I'm sorry. Okay. 10 Q I'm just trying to reconcile the 11 difference in the dates here. I want to make sure 12 that we're all -- 13 A There were no -- there were not two 14 meetings, just one meeting. 15 Q Just one meeting. Got it. 16 A Yes, sir. Just one meeting. Yeah. 17 Q All right. Now, the next question is does 18 reading this document refresh your recollection 19 about more details that occurred in that meeting 20 on -- we're going to call it June 3rd because 21 that's what's in your complaint? 22 A Yeah. I mean, I see it here. Basically I</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 mentioned about getting out of the weeds. We see</p> <p>2 that in the employee counseling list that I never</p> <p>3 got, form — focus on a higher level to make it</p> <p>4 profitable. I mean, that's basically what I was</p> <p>5 saying.</p> <p>6 Q Let's go through it. I'm just -- my</p> <p>7 question was did it help refresh your recollection</p> <p>8 about what happened in the meeting?</p> <p>9 A Yeah, I guess so. I guess so.</p> <p>10 Q Let's look at the first sentence. It</p> <p>11 says, John Frink, Chris LaRocco, and I met with</p> <p>12 Michael to establish performance expectations. Do</p> <p>13 you recall that the purpose of the meeting was to</p> <p>14 establish performance expectations?</p> <p>15 MR. JARRETT: Objection. Calls for</p> <p>16 speculation. You can answer.</p> <p>17 A I don't know if I agree with it or not. I</p> <p>18 mean, that's what it appears to be, as we say in</p> <p>19 accounting. We use the word appear. But it says,</p> <p>20 for the next two weeks. Why in the next two</p> <p>21 weeks? They were monitoring me during those two</p> <p>22 weeks' time. Even people out in the plant came in</p>	<p style="text-align: right;">87</p> <p>1 checklist, do this, do that, do this, do that. I</p> <p>2 did all those things, but I never had them before</p> <p>3 this meeting, and it was really trivial things.</p> <p>4 Q But they ask you to improve your</p> <p>5 performance over the next two weeks and they give</p> <p>6 you a list, is that correct?</p> <p>7 A Well --</p> <p>8 MR. JARRETT: Objection. Assumes facts</p> <p>9 not in evidence. You can answer.</p> <p>10 A Well, some of the things had nothing to do</p> <p>11 with performance. It was just --</p> <p>12 Q No, no. You're going by my question.</p> <p>13 They gave you a list --</p> <p>14 A Yeah.</p> <p>15 Q -- after this meeting of things that you</p> <p>16 should do to improve your performance. Is that</p> <p>17 right or wrong?</p> <p>18 MR. JARRETT: Objection. Assumes facts</p> <p>19 not in evidence. You can answer.</p> <p>20 A I would say it's wrong in the sense that</p> <p>21 it had nothing to do -- like follow up on this,</p> <p>22 follow up on that. This is -- this is something,</p>
<p style="text-align: right;">86</p> <p>1 and sat in the office. I mean, that's why this</p> <p>2 whole thing seemed to be something different than</p> <p>3 what it was.</p> <p>4 MR. JARRETT: He's asking you about --</p> <p>5 THE WITNESS: I know.</p> <p>6 MR. JARRETT: -- the meeting, not</p> <p>7 necessarily what the document says, what the</p> <p>8 purpose of the meeting was.</p> <p>9 THE WITNESS: Well, that's what they said.</p> <p>10 Q Do you agree or disagree?</p> <p>11 A They -- well, that's what they said. I</p> <p>12 didn't call the meeting, so I have to agree with</p> <p>13 -- they say that's what it was for. That's what</p> <p>14 they said. I don't know, you know, fully.</p> <p>15 Q Were you put on a performance improvement</p> <p>16 plan for the next two weeks as a result of this</p> <p>17 meeting?</p> <p>18 A No. I wasn't given anything about a</p> <p>19 performance improvement plan. They monitored me.</p> <p>20 They told me to -- I mean, it was -- John Frink</p> <p>21 was going back to Colorado. He goes there quite a</p> <p>22 bit. And when he -- he gave me a little</p>	<p style="text-align: right;">88</p> <p>1 you know -- things that John wanted to do, and</p> <p>2 John had to prepare this list after this meeting,</p> <p>3 so they didn't give me this list during this</p> <p>4 session.</p> <p>5 Q Okay.</p> <p>6 A John --</p> <p>7 Q As a result of the meeting, John prepared</p> <p>8 a list?</p> <p>9 A John prepared a list. Yes, sir.</p> <p>10 Q And he gave it to you?</p> <p>11 A He did.</p> <p>12 Q And there were tasks for you to perform on</p> <p>13 the list?</p> <p>14 A That's correct. But I don't think that's</p> <p>15 in reference to my performance. It's just tasks</p> <p>16 to do. Had nothing to do with the performance.</p> <p>17 Q And you did the tasks?</p> <p>18 A Yeah. Like I would do the tasks two</p> <p>19 months ago or three months ago.</p> <p>20 Q That's fine. You're not answering the</p> <p>21 question. You're giving me much more information.</p> <p>22 A Okay. But it had nothing to do with</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 performance.</p> <p>2 Q Okay. It didn't have anything to do with</p> <p>3 performance?</p> <p>4 A No, no.</p> <p>5 Q Okay. Even though they say it's to</p> <p>6 establish performance expectations in this</p> <p>7 meeting, the list that's generated after the</p> <p>8 meeting has nothing to do with your performance?</p> <p>9 MR. JARRETT: Objection. Asked and</p> <p>10 answered. You can answer it again.</p> <p>11 A I don't -- I don't feel it had anything to</p> <p>12 do with performance because they would have said,</p> <p>13 this is wrong, that's wrong, this is wrong, do</p> <p>14 this, do that, do that. And a lot of things were</p> <p>15 just, you know, follow up on this, follow up on</p> <p>16 that. And then there was -- we was going do this</p> <p>17 cash -- what Chris called a cash flow. He was</p> <p>18 going to show me how to do that, or we were</p> <p>19 talking about doing that, and I did that. But</p> <p>20 other that -- other than that, things were fairly</p> <p>21 normal. It was normal things, but it had nothing</p> <p>22 to do with -- from my perspective, performance</p>	<p style="text-align: right;">91</p> <p>1 assumptions on paper, that --</p> <p>2 MR. JARRETT: He's just asking your</p> <p>3 recollection as to whether in the meeting you</p> <p>4 recall him saying --</p> <p>5 THE WITNESS: Yeah.</p> <p>6 A I don't recall -- I don't recall about</p> <p>7 making decisions faster. No. I don't recall</p> <p>8 that.</p> <p>9 Q So you don't recall one way or the other?</p> <p>10 It could have happened; you just don't recall at</p> <p>11 this point?</p> <p>12 A No. I don't recall making decisions</p> <p>13 faster because I made the decisions, what I could</p> <p>14 make -- there's things I couldn't do. I had to</p> <p>15 pretty much rely on Kevin or any other of the five</p> <p>16 people, but you know -- so it wasn't like I had</p> <p>17 autonomy to do --</p> <p>18 Q So as you recall the situation now, you're</p> <p>19 saying you disagree -- if someone criticized you,</p> <p>20 because you weren't making decisions fast enough,</p> <p>21 your position is, I disagree with that, I'm making</p> <p>22 them as fast as I can? So just you don't agree</p>
<p style="text-align: right;">90</p> <p>1 issues.</p> <p>2 Q Let's take a look at the sentence that</p> <p>3 looks like it's at the end of that first</p> <p>4 paragraph. It reads, discussion also included</p> <p>5 making decisions faster, knowing inventory at all</p> <p>6 times, and how that data correlates with</p> <p>7 financials. Do you see that?</p> <p>8 A I do. Yes, sir.</p> <p>9 Q And does that refresh your recollection</p> <p>10 that they asked you to make decisions faster?</p> <p>11 A I didn't know I was making them slow. So</p> <p>12 no. I don't -- I don't recall that, no, to be</p> <p>13 quite honest from that meeting. I don't recall</p> <p>14 that, those words. I got this, like I said, two</p> <p>15 years later or whatever the EEOC -- about</p> <p>16 inventory. I knew what the inventory was pretty</p> <p>17 much, so they were saying things that -- they</p> <p>18 were -- because I would tell John, this is where</p> <p>19 we're at, but they were using this because of the</p> <p>20 situation, you know, with the capital call, and</p> <p>21 they knew it. John knew it, and so this is</p> <p>22 written from their vantage point, making these</p>	<p style="text-align: right;">92</p> <p>1 that you were making decisions slowly?</p> <p>2 A Yeah. I don't agree. I don't agree with</p> <p>3 that, and some things would be out of my</p> <p>4 decision-making power. Yeah.</p> <p>5 Q And then the next clause says, knowing</p> <p>6 inventory at all times. But the fact that it's in</p> <p>7 an employee counseling notice, doesn't that imply</p> <p>8 that you didn't know what the inventory was at all</p> <p>9 times?</p> <p>10 MR. JARRETT: Objection. Calls for</p> <p>11 speculation. Assumes facts not in evidence. But</p> <p>12 you can answer.</p> <p>13 A No. It doesn't.</p> <p>14 Q Okay. Did anybody criticize you about</p> <p>15 your knowledge of the inventory during this</p> <p>16 meeting?</p> <p>17 A I don't recall, but I will say that I knew</p> <p>18 what was the inventory was.</p> <p>19 Q So if they did say that, you just disagree</p> <p>20 and you knew what of the inventory was?</p> <p>21 A I knew what it was.</p> <p>22 Q Let's read the next line. I'll read it</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 for you. I emphasized the he, parentheses, 2 Michael, needs to meet daily with John to discuss 3 current financials and updates, parentheses, no 4 more leaving reports on his desk without 5 conversation. Do you see that language? 6 A I see that language. Yes, sir. 7 Q Do you remember them discussing that topic 8 with you? 9 A I remember them discussing that, and I 10 left it in his chair, actually. I didn't leave it 11 on the desk. I put it on his chair. 12 Q You disagree with the desk, but you left 13 it in his chair? 14 A Yeah, because he was never available. You 15 know, I tried to get him in -- you know, I 16 can't -- John is out there at the plant, fixing 17 it. John has to make himself available, and we 18 tried to do that, right? So -- but did they give 19 John a counseling notice? You know, that's -- 20 Q So you're saying it's at least some or all 21 of John's fault that he's not available for you to 22 talk to?</p>	<p style="text-align: right;">95</p> <p>1 or we got to review the financials for this month, 2 and then, you know, give everybody, the plant 3 managers information and stuff to help them. And 4 we did do that eventually, but it was -- it was 5 sporadic, and this is June, right? So you're 6 talking June closing, and I was only there a month 7 later, like July and -- August 20th I was gone. 8 So we hadn't even finished August, so I wasn't 9 there. After this meeting I was only there less 10 than two months with one financial report after 11 June, so -- 12 Q The next clause reads, he needs to focus 13 on performing at a higher level and not in the 14 day-to-day, quote, weeds of things going on in the 15 office. Do you recall that discussion during the 16 meeting? 17 A I do. I do. Yes, sir. 18 Q And how did you respond, if you recall, to 19 the criticism that you need to focus on performing 20 at a higher level? 21 MR. JARRETT: Objection. Assumes facts 22 not in evidence. You can answer.</p>
<p style="text-align: right;">94</p> <p>1 A Well, partially. But I did go to -- I did 2 go to and try to talk to him, and he would say a 3 lot of times, if there's no there out in the 4 plant, there's no here. So that was -- and I 5 understand that, prioritizing. And then sometimes 6 I would give him something and he says, yeah, I 7 know all about this. You know, I had a business 8 in Colorado. I know how to read financials. 9 So -- yes. 10 Q After this June 3rd or June 4rd meeting, 11 did you use a different strategy to try to get 12 more face time and communications and direct 13 meetings with John as a result of this meeting? 14 A Yeah. I think we -- I think we both did. 15 I think we both did, because John was sitting 16 there, and John was really passive. He wasn't -- 17 you know, Beth was controlling the meeting and 18 she's not even there physically, you know? But 19 yeah. We tried to do more, but things would come 20 up, and I would try, yes. And I tried before, but 21 still, things would happen, you know. And I said, 22 John, you know, we got to meet, we have to meet,</p>	<p style="text-align: right;">96</p> <p>1 A Well, first of all, I said, I'm the only 2 degree -- I probably said -- I'm not 100 percent 3 sure -- I am the only degreed accountant here. 4 I'm the only one that knows how to do certain 5 things. There's no one else. So the weeds -- 6 someone's got to be in the weeds. If I'm not in 7 the weeds, who is going to be there? And then I 8 did ask them for help, because when they made this 9 statement, right, and I was passive, I had asked 10 them, even John, I said, I need help, okay? If 11 you want me to do things at a higher level, I need 12 help so I can get out of weeds, right? And not 13 that I can't do it at a higher level; I was doing 14 the things necessary, but I was doing so many 15 different things, you know, that had to be done. 16 Q So you thought you were -- had too many 17 things on your plate in order to perform at a -- 18 the high-level tasks that you wanted to do -- or 19 they wanted you to do? 20 A Yeah. I would say -- yeah. I would say 21 that whatever else they wanted me to do, but I was 22 doing the financial statements. I was doing</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 payroll, HR – some HR functions. I was doing – 2 working with sales, doing bids. If something 3 comes up for a job, I got to stop everything and 4 work out a complicated bid, you know. That takes 5 a day or more to do. And I was able to do some 6 things, like provide feedback to the managers, you 7 know, as far as their performance and stuff. But 8 I asked them for help, so that if there was 9 another task they wanted me to do, I could do 10 them. And Chris told – LaRocco told me, we're 11 going to get you some help. 12 Q You mean help in the form of assistants? 13 A Yes. 14 Q Accountants? 15 A Correct, correct. Eventually he said he 16 was going to get me help. The next thing I know, 17 I was terminated. 18 Q Was there any e-mail or formal request 19 that you made to anybody within the company to 20 say, I need official staffing in order to do the 21 job you want me to do? 22 MR. JARRETT: Objection. Vague. You can</p>	<p style="text-align: right;">99</p> <p>1 she kept me with the five managers' files, and all 2 the hourly people went back to the office manager. 3 It was a – I didn't have those in the first – 4 when I first came there, and there was some office 5 things going on between Michelle and Beth Aleman. 6 They didn't -- EnviroTech didn't want Fran to have 7 access -- 8 Q Executives? 9 A Not only that, the hourly people in the 10 office. They didn't want her to have them, so 11 they gave everything to me. 12 Q Let me read the next sentence. 13 A Yeah. 14 Q During the audit of the files in this 15 visit, I found the files to be out of federal 16 compliance. Confidentiality agreements were 17 missing and random accounts payable items were 18 placed in the employee files. Do you remember a 19 discussion of that topic during the June 3rd or 20 June 4th meeting? 21 A I remember -- not during the meeting. I 22 remember that Beth had got Fran Holliday, who was</p>
<p style="text-align: right;">98</p> <p>1 answer. Vague and compound. But you can answer. 2 A I don't know, but I do know it was verbal. 3 See, here's the disadvantage. I don't have the 4 e-mails. They could provide you with all their 5 e-mails and maybe some of mine, but I don't have 6 any of my e-mails where I responded. They could 7 be selective. I don't know. But I know I did 8 discuss it, you know, verbally. And Chris LaRocco 9 said, we're going to get you some help. 10 Q Next line reads, I also removed all HR 11 employee file responsibilities except the five 12 exempt manager positions from Michael's 13 responsibility. Do you see that? 14 A Yes, sir. 15 Q Is that an accurate statement? 16 A That is accurate. Yes, sir. 17 Q Okay. And why did she do that? Did she 18 tell you? 19 A It's a long story behind all this. 20 Q Did she tell you at the meeting why she 21 was taking that responsibility away from you? 22 A She didn't exactly say. No. But she –</p>	<p style="text-align: right;">100</p> <p>1 the office manager, and myself together – that 2 might be in the next sentence somewhere. Yeah. 3 It's in the second sentence. She got us both 4 together because Fran was doing it, and she said 5 to both of us, these are out of federal 6 compliance. Now, what she meant by that, fully I 7 don't know. But this is – this is the part that 8 I do remember: Any counseling notices that I put 9 in employees' files, because I've sat in a number 10 of meetings with John when they brought someone 11 from the plant in for counseling or terminating 12 them or disciplining them – 13 Q I'm sorry. It seems like you're going off 14 in a different direction. 15 A Well, I'm -- 16 Q Do you agree or disagree with her 17 conclusion that the files were out of federal 18 compliance? 19 A I don't know. I don't know the federal 20 law on all that. I can't speak to that. 21 Q Okay. 22 A But I do know -- I do know the complaints</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

26 (101 to 104)

<p style="text-align: right;">101</p> <p>1 that were in there, she wanted me to take all the</p> <p>2 counseling notices out, and I didn't understand</p> <p>3 why. How would you -- why wouldn't you want to</p> <p>4 keep employee counseling notices in the file?</p> <p>5 Where would you put them? Why do you want to hide</p> <p>6 it?</p> <p>7 Q So you disagreed with her?</p> <p>8 A Well, I didn't -- I don't think it was --</p> <p>9 to me, it didn't seem like a logical -- a logical</p> <p>10 thing, but I didn't argue with her about it. I --</p> <p>11 she took the files away, and that was less I had</p> <p>12 to do, and that was fine. But other than that, I</p> <p>13 don't know.</p> <p>14 Q The files were your responsibility before</p> <p>15 they were taken away from you?</p> <p>16 A They were, and they were Fran's before</p> <p>17 that, but no one told me anything about federal</p> <p>18 compliance. I had counseling notices in each</p> <p>19 person's file. I think that's where they should</p> <p>20 belong. I had insurance forms in their file,</p> <p>21 applications in their file, copies of Social</p> <p>22 Security cards for I-9 verifications, two that you</p>	<p style="text-align: right;">103</p> <p>1 of federal compliance? I don't know. She would</p> <p>2 have to state how it was out. I don't know how it</p> <p>3 was.</p> <p>4 Q You don't know what the federal</p> <p>5 requirements were to know whether she was</p> <p>6 compliant or not?</p> <p>7 A Yeah. I don't even know if she can</p> <p>8 remember what was out of compliance, but I do know</p> <p>9 she didn't want the counseling notices in there.</p> <p>10 That I know. And I assume -- I just assume that</p> <p>11 she thought that was a reason to be out of federal</p> <p>12 compliance with. You know, to me that didn't</p> <p>13 sound copacetic, but yeah.</p> <p>14 Q Last sentence reads, in addition I told</p> <p>15 Michael he needs to create accounts payable files</p> <p>16 for all the vendors they are using, and those</p> <p>17 files need to be current at all time [sic]. Do</p> <p>18 you remember that discussion point during the</p> <p>19 meeting?</p> <p>20 A Yeah. There were accounts payable files.</p> <p>21 They were there. Now, she's talking about me</p> <p>22 putting files in the employee files? I mean,</p>
<p style="text-align: right;">102</p> <p>1 needed, and if there were counseling, yeah, I put</p> <p>2 them there. That's where I felt they belonged,</p> <p>3 but I didn't know -- she said they shouldn't be in</p> <p>4 there.</p> <p>5 Q So you didn't know whether they were</p> <p>6 within federal compliance or not?</p> <p>7 A Yeah. I don't have any idea. No, sir. I</p> <p>8 don't know that.</p> <p>9 Q You testified earlier that you had</p> <p>10 previous HR functions and responsibilities?</p> <p>11 A I did. I did.</p> <p>12 Q I assume training, correct?</p> <p>13 A I did years ago, right, years ago. I</p> <p>14 mean, first time I had HR responsibilities, when I</p> <p>15 first started in 1981, and I just did kind of like</p> <p>16 payroll stuff, but I had full range of it -- of</p> <p>17 that in 1986, and you know, that was 30-some years</p> <p>18 ago, and the laws changed. But I-9 came in during</p> <p>19 1986, because I remember that's when that came in.</p> <p>20 So I knew that -- what forms you had to have and</p> <p>21 verifications and stuff like that, but she said it</p> <p>22 was out of federal -- how was it? How it was out</p>	<p style="text-align: right;">104</p> <p>1 prior to that, right?</p> <p>2 Q I'm just reading what it says.</p> <p>3 A Yeah.</p> <p>4 Q It says, I told Michael he needs to create</p> <p>5 accounts payable files, so that certainly implies</p> <p>6 that there were not accounts payable files,</p> <p>7 correct?</p> <p>8 A Well, it says, during the audit of the</p> <p>9 files, during this visit I found the files to be</p> <p>10 out of federal compliance. Confidential</p> <p>11 agreements were missing.</p> <p>12 MR. JARRETT: That's not what he's reading</p> <p>13 from.</p> <p>14 Q The last --</p> <p>15 A Random accounts payable items were placed</p> <p>16 in employees' files. So she's saying that --</p> <p>17 Q Look at the -- look at the --</p> <p>18 MR. JARRETT: Hold on.</p> <p>19 Q Please stop. Just look at the last</p> <p>20 sentence in this block here.</p> <p>21 A Okay.</p> <p>22 Q It's the last sentence. Read along with</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

27 (105 to 108)

<p>105</p> <p>1 me: In addition I told Michael he needs to create 2 accounts payable files for all the vendors they 3 are using and those files need to be current at 4 all time. That's the only thing I want to talk 5 about right now. Does reading that refresh your 6 recollection that Beth discussed that issue with 7 you during the June 3rd or June 4th meeting? 8 A No, because there were accounts payables 9 files. There was already -- 10 Q So you disagree with her statement in here 11 that implies that there were not accounts payable 12 files? 13 A Yeah. There were plenty of accounts 14 payable files. But if she's referring to the 15 items that were placed in employees' file, if 16 that's what -- I don't know. 17 Q But that's a different issue, isn't it? 18 A It makes -- 19 Q Why do you keep going back to that issue? 20 A Well, I don't know. Maybe -- maybe 21 because she says, it's an employee's file and not 22 an accounts payable file. Maybe that's what she's </p>	<p>107</p> <p>1 A Yeah. 2 Q Did Ms. Aleman criticize you for the fact 3 that she believed that accounts payable files were 4 not current at the time that she reviewed them? 5 A I -- no. I don't recall that at all 6 unless she's talking about if I put an employee 7 vendor check in their file. Other than that, I 8 don't know of any. No, sir. 9 Q Okay. Let's go to the next section. 10 That's the section titled action taken on this 11 notice? 12 A Okay. 13 Q Do you see where that is? 14 A Yes, sir. 15 Q Chris is going to make a score card and/or 16 Excel spreadsheet for Michael to use to start 17 collecting vital financial information, which will 18 help with recording and create a, quote, state of 19 union, end quote, style report that she can share 20 with corporate and John at all times. Do you see 21 that language? 22 A I do. Yes, sir. </p>
<p>106</p> <p>1 saying. 2 Q Okay. But account payable files are 3 different than employee files, right? 4 A But if I -- they are, but if I have a -- 5 if I have a -- let me give you a good example. If 6 an employee -- which many of them did, they came 7 to John wanting an advance on their salary. 8 Q Okay. 9 A Okay? We'd have to cut accounts payable 10 check for that. I would place that in the file, 11 the employee file -- 12 Q That's not a vendor, is it? 13 A Well, it is. Yeah. Sure. 14 Q How is that a vendor? It's an employee. 15 A But it's -- if you pay anything to an 16 employee outside of payroll, it's -- they're 17 created -- they're called a vendor. You have to 18 set up a vendor number in the account payable 19 system with that person's name on it so they can 20 get cut a check from the system. So they are a 21 vendor. They are a vendor. Yes, sir. 22 Q All right. </p>	<p>108</p> <p>1 Q Is that an accurate summary of an item 2 that was discussed during the meeting? 3 A Yeah. That is accurate. Yes, sir. 4 That's accurate. 5 Q Did Chris provide you with the score card 6 that's referred there [sic]? 7 A Yes, yes. We would have done that. Yes, 8 sir. 9 Q Is that different than the task list that 10 John provided you or is that the same thing? 11 A I don't have the list, so it may have been 12 a part of that, but John would have -- John 13 probably wouldn't have said those words on there. 14 And they may have coached John what to put on the 15 list. 16 Q I'm just asking whether it's the same or 17 different list. 18 A Well, it may have been a part of it, but I 19 do know that we did it right after this meeting. 20 Yes. We did do that. So that was handled. Yes, 21 sir. 22 Q And that was part of your counseling </p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

28 (109 to 112)

<p style="text-align: right;">109</p> <p>1 activities, was to help you by creating the score 2 card, correct? 3 MR. JARRETT: Objection. Calls for 4 speculation. Assuming facts not in evidence. You 5 can answer. 6 A Well, I don't think it was counseling – I 7 wasn't doing anything wrong because I had never 8 done it before. I was never asked to do it 9 before, so it was something new they wanted me to 10 do. Yes. 11 Q Reading the last section that's written, 12 the topic is next step if infraction is repeated. 13 Quote, this is not discussed as this first meeting 14 was to convey the expectations that are needed for 15 the controller position and more specifically for 16 Michael to understand he needs to produce more 17 qualitative/quantitative work and be a hands-on 18 controller. Do you see that language? 19 A What wasn't discussed? The infractions? 20 Q Next step is infraction, I assume. 21 A Yeah. 22 Q We're reading the same document.</p>	<p style="text-align: right;">111</p> <p>1 external pressure, you know, from the investors, 2 and you know, they were in a position as 3 management, EnviroTech, you know – it was 4 probably shame for them. 5 Q Do you feel that you were being unfairly 6 blamed for the financial position of the company 7 at that time? 8 A I do. Yes, sir. I did. 9 Q Let's turn to page 9 of the complaint. On 10 paragraph 77, please -- you can take that exhibit 11 and just set it right here in a pile. 12 A Okay. There you are. 13 Q Okay. It reads, plaintiff was to be 14 treated with chemotherapy two out of every three 15 Fridays, is that correct? 16 A That is correct. 17 Q Okay. And -- 18 A That was – that was – I had different 19 regimens, but that was when I had to go to the 20 hospital to have intervenous, but I also had the 21 little pill, but that had nothing to do with being 22 off on Fridays. But yeah. Two out of every three</p>
<p style="text-align: right;">110</p> <p>1 A Yes. So there was no process improvement. 2 Q Do you have a recollection that they asked 3 you to produce more qualitative/quantitative work 4 and be a hands-on controller? 5 A They were saying, get out of the weeds. I 6 remember that. But I wasn't – I was doing 7 quality work, quantitative work. 8 Q So you disagree with the criticism? 9 A Well, I think it's – they're reflecting 10 getting out of the weeds again. So they may have 11 said that, but I was producing the work that I 12 could produce. I was producing it. Yeah. 13 Q How did you feel when you got done with 14 the meeting? 15 A I felt very bad. 16 Q Why? 17 A Well, I felt bad for a couple – a couple 18 reasons. First, John was scared to go to the 19 meeting himself. And they pulled, you know, us in 20 there. I felt – I felt bad for the company in 21 the sense that they had to do this capital call, 22 not because it was my fault. Now they're getting</p>	<p style="text-align: right;">112</p> <p>1 Fridays, that's correct. 2 Q And paragraph 79, is this accurate, 3 plaintiff also told Frink that he would be able to 4 maintain a 40-hour week despite the chemotherapy? 5 A That is correct. 6 Q And did you, in fact, maintain a 40-hour 7 week during the time that you were employed with 8 Trae? 9 A Yes. 10 MR. JARRETT: Objection. Asked and 11 answered. But answer. 12 A Yeah. 40 to 45. 13 Q 40 to 45? 14 A And they were watching me. They were 15 going to make sure I did that because they would 16 have probably wrote it up after these meetings, 17 right? I did. 18 Q And it's true that Trae and EnviroTech 19 agreed to your four-day workweek on some weeks 20 while still performing 40 to 45 hours per week? 21 A I assume that's correct. I told John. 22 John talked to Kevin. They approved that. I gave</p>


Transcript of Michael Donaldson
Conducted on October 3, 2019

30 (117 to 120)

<p>117</p> <p>1 10, and let's take a look at interrogatory number</p> <p>2 11.</p> <p>3 A Okay.</p> <p>4 Q And the interrogatory reads, describe in</p> <p>5 detail each and every fact in support of your</p> <p>6 contention in paragraph 91 of the complaint that</p> <p>7 your employment was terminated because of your</p> <p>8 actual or perceived disability of pancreatic</p> <p>9 cancer. Do you see that question?</p> <p>10 A I do.</p> <p>11 Q Mr. Donaldson, how does the hiring of a</p> <p>12 temporary accountant constitute a fact in support</p> <p>13 of your allegation that your employment was</p> <p>14 terminated because of your actual or perceived</p> <p>15 disability of pancreatic cancer?</p> <p>16 MR. JARRETT: Objection. Calls for legal</p> <p>17 conclusion. You can answer.</p> <p>18 A Repeat that again, please.</p> <p>19 Q In the body of your answer, you include</p> <p>20 the fact that Mr. Whyrick hired a temporary</p> <p>21 accountant upon Mr. Donaldson's hospitalization on</p> <p>22 May 19th?</p>	<p>119</p> <p>1 I would be in the hospital. We didn't know -- he</p> <p>2 didn't know and I didn't know. So he took this</p> <p>3 upon his own to do that for whatever -- for</p> <p>4 whatever reason, maybe to get the work done.</p> <p>5 Q My question is simply how is this relevant</p> <p>6 to any reason about why you were eventually</p> <p>7 terminated on August 20. Is it relevant or</p> <p>8 irrelevant your eventual termination?</p> <p>9 MR. JARRETT: Objection. That calls for</p> <p>10 legal conclusion. You can answer.</p> <p>11 Q It's not relevant, is it?</p> <p>12 MR. JARRETT: Objection to the form of the</p> <p>13 question, and that calls for legal conclusion.</p> <p>14 You can answer.</p> <p>15 A I'll have to let you guys decide. I'm not</p> <p>16 -- I don't know. I don't know how to answer it.</p> <p>17 I can't say because I'm not the one hiring the</p> <p>18 person, and I know that the person didn't stay</p> <p>19 long. I do know that. And --</p> <p>20 Q That's because you were performing your</p> <p>21 job well, right? You didn't need her?</p> <p>22 MR. JARRETT: Objection. Calls for</p>
<p>118</p> <p>1 A Mm-hmm.</p> <p>2 Q Why does that give any indication of why</p> <p>3 you were eventually terminated on August 20th?</p> <p>4 MR. JARRETT: Objection. Calls for legal</p> <p>5 conclusion. You can answer.</p> <p>6 A Well, I will say that I didn't hire an</p> <p>7 accountant. I can't make a conclusion on that.</p> <p>8 Q You agreed it was a reasonable course of</p> <p>9 action when you were initially hospitalized?</p> <p>10 A Yeah. I would think that -- I would think</p> <p>11 that -- since I was hospitalized in March with</p> <p>12 something going on and I had been going to</p> <p>13 treatments -- not treatments, chemotherapy, but</p> <p>14 different doctor's appointments and MRIs and</p> <p>15 sonograms and ultrasounds and all that kind of</p> <p>16 stuff, GI doctors, and then I was hospitalized,</p> <p>17 the work has to get done. And I was the only</p> <p>18 accountant. It wasn't like I could say, okay, I</p> <p>19 had a backup person or -- because my supervisor,</p> <p>20 they supervise up to eight people direct, 22</p> <p>21 indirect. I cross-train people. Everyone knew.</p> <p>22 I was the only person. So we didn't know how long</p>	<p>120</p> <p>1 speculation. You can answer if you know.</p> <p>2 A Well, I guess they assumed that.</p> <p>3 Q But you told them that you didn't need</p> <p>4 her, didn't you? You said, I can work 40 to 45</p> <p>5 hours a week, I don't need an assistant at that</p> <p>6 time?</p> <p>7 A No, no. I said I was going to train the</p> <p>8 person.</p> <p>9 Q Okay. So did you want her there or not?</p> <p>10 A I did, because they hired her. They hired</p> <p>11 her. They had modus for hiring her, and I would</p> <p>12 train that person, and I did it willingly.</p> <p>13 Q Did you disagree when they let her go?</p> <p>14 MR. JARRETT: Objection.</p> <p>15 A It wasn't up to me.</p> <p>16 MR. JARRETT: Hold on. Let me object.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. JARRETT: Objection. Relevance. Now</p> <p>19 you can answer.</p> <p>20 A It wasn't my decision to make.</p> <p>21 Q Did you disagree with them --</p> <p>22 A I didn't --</p>

Transcript of Michael Donaldson
Conducted on October 3, 2019

45 (177 to 180)

<p style="text-align: right;">177</p> <p>1 that. Yes.</p> <p>2 Q Any time prior to it not getting done, did</p> <p>3 you ask anyone for any assistance to help getting</p> <p>4 it done [sic]?</p> <p>5 A Well, like I said, the 15th, right?</p> <p>6 They're showing me on the 15th. I'm leaving for a</p> <p>7 doctor's appointment on the 15th. I didn't get</p> <p>8 back until the 27th.</p> <p>9 Q My question is, did you ask -- did you</p> <p>10 tell anyone you needed help getting the job done?</p> <p>11 A There was no one there to help me.</p> <p>12 Q Did you ask for help to get the job done?</p> <p>13 MR. JARRETT: Yes or no?</p> <p>14 A No, no, because there's no one to ask.</p> <p>15 I'm doing financial statements. There's no one to</p> <p>16 ask. There's no one to ask. But then he says,</p> <p>17 you know, I'm very good at accounting and detailed</p> <p>18 -- I'm very detailed in my communications and</p> <p>19 detailed as an auditor, so I don't know. But we</p> <p>20 did get that PO system done so they wouldn't have</p> <p>21 to enter those 300 lines anymore. So we got them</p> <p>22 done in June.</p> <p style="text-align: right;">178</p>	<p style="text-align: right;">179</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, MICHAEL DONALDSON, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony and the same is a true,</p> <p>5 correct, and complete transcription of the</p> <p>6 testimony given by me and any corrections appear</p> <p>7 on the attached errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (SIGNATURE) (DATE)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p>1 Q Okay.</p> <p>2 A We got them done.</p> <p>3 Q All right. Is there anything -- any</p> <p>4 medications that you're taking that would have</p> <p>5 interfered with you giving full and complete</p> <p>6 answers here today for the deposition?</p> <p>7 A None.</p> <p>8 Q Thinking back over your testimony from the</p> <p>9 time we started at 10:30, are you satisfied with</p> <p>10 all your answers or is there anything upon</p> <p>11 reflection that you need to change to any of the</p> <p>12 questions I've asked you?</p> <p>13 A No, no. I'm pretty satisfied with the</p> <p>14 answers I gave. Yes, sir.</p> <p>15 Q Okay. All right. Thank you for your</p> <p>16 time. The deposition is over.</p> <p>17 (Off the record at 1:50 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">180</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC</p> <p>2 I, Kaylee Lachmann, the officer before</p> <p>3 whom the foregoing deposition was taken, do hereby</p> <p>4 certify that the foregoing transcript is a true</p> <p>5 and correct record of the testimony given; that</p> <p>6 said testimony was taken by me stenographically</p> <p>7 and thereafter reduced to typewriting under my</p> <p>8 direction; that reading and signing was requested;</p> <p>9 and that I am neither counsel for, related to, nor</p> <p>10 employed by any of the parties to this case and</p> <p>11 have no interest, financial or otherwise, in its</p> <p>12 outcome.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set my</p> <p>14 hand and affixed my notarial seal this 9th day of</p> <p>15 October, 2019.</p> <p>16</p> <p>17 </p> <p>18</p> <p>19</p> <p>20 My commission expires: March 14, 2024</p> <p>21</p> <p>22</p>